

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**LUTHER SPENCER,**

**Plaintiff,**

**v.**

**Civil Action 2:14-cv-615  
Judge Algenon L. Marbley  
Magistrate Judge Elizabeth P. Deavers**

**MICHAEL B. COLBERT, et al.,**

**Defendants.**

**REPORT AND RECOMMENDATION**

Plaintiff filed his Motion to Proceed *in forma pauperis* on October 30, 2013. On November 22, 2013, the Court granted Plaintiff's Motion to Proceed *in forma pauperis* and directed him to submit a completed summons form, United States Marshal form, and a copy of the Complaint for each Defendant. (ECF No. 3.) Plaintiff provided the forms, but on March 13, 2014, the summonses were returned unexecuted as to all Defendants because Plaintiff provided an incorrect zip code. On February 3, 2013, Plaintiff filed a Motion for Summary Judgment based on Defendants' failure to respond to his Complaint. (ECF No. 7.) On May 22, 2014, the Magistrate Judge recommended that Plaintiff's Motion be denied because Defendants had not yet been served with summons and Complaints. (ECF No. 9.) The Magistrate Judge also ordered Plaintiff to show cause why his lawsuit should not be dismissed under Federal Rule of Civil Procedure 4(m)<sup>1</sup> for failure to timely effect service. On June 16, 2014, the Magistrate Judge

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<sup>1</sup> Rule 4(m) provides in pertinent part as follows:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the

issued another show cause order, this time giving Plaintiff an additional fifteen days in which to correct the error he made in addressing the summons forms. (ECF No. 12.) To date, Plaintiff has not effected service over any Defendants. Nor has he responded to the Court's second Show Cause Order. It is therefore **RECOMMENDED** that the Court dismiss this action without prejudice pursuant to Rule 4(m) for failure to timely effect service of process.

### **PROCEDURE ON OBJECTIONS**

If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that "failure to object to the magistrate judge's recommendations constituted a waiver of [the defendant's] ability to appeal the district court's ruling"); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court's denial of pretrial motion by failing to timely object to magistrate judge's report and recommendation). Even when timely objections are filed,

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action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

appellate review of issues not raised in those objections is waived. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) (“[A] general objection to a magistrate judge’s report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal . . . .”) (citation omitted)).

Date: July 9, 2014

/s/ Elizabeth A. Preston Deavers  
Elizabeth A. Preston Deavers  
United States Magistrate Judge